

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

_____	X	
In re PAYMENT CARD INTERCHANGE	:	No. 05-md-1720 (MKB)(JO)
FEE AND MERCHANT DISCOUNT	:	
ANTITRUST LITIGATION	:	JOINT STATUS CONFERENCE STATEMENT
_____	:	
	:	CONFERENCE DATE: NOVEMBER 7, 2019
This Document Relates To:	:	
	:	
ALL ACTIONS.	:	
_____	:	
	X	

The parties respectfully submit this Joint Case Status Report for the Case Management Conference currently scheduled for November 7, 2019.

I. PENDING MOTIONS

The bank defendants' motion to dismiss all claims asserted against them in the *Barry's* Action is fully briefed (ECF Nos. 7399, 7400, 7402). In the event oral argument on the motion would assist the Court, the parties are prepared to present argument at the Court's convenience.

On October 24, 2019, counsel for the Retailers and Merchants Objectors filed their Written Objections to Magistrate's Report and Recommendation dated October 11, 2019 (Doc. 7744).

On October 18, counsel for Elgin Ave. Recovery, LLC, and Transform SR Holdings LLC filed a Motion to Substitute a Party and to Amend Caption (the "Motion to Substitute") (Doc. 7741). At the time of filing of this Status Report, Defendants were seeking an extension to file an objection to the Motion to Substitute.

On October 25, 2019, counsel for Elgin Ave. Recovery, LLC, and Transform SR Holdings LLC filed their Objections to Order Granting Constantine Cannon's Motion to Withdraw as Counsel dated October 11, 2019 (Doc. 7749).

On October 29, 2019, Defendants filed a motion for leave to depose Prof. Jerry Hausman, an expert in the 7-Eleven Plaintiff and The Home Depot actions, for three days (Doc. 7751).

II. STATUS OF DISCOVERY

The parties continue to work cooperatively on discovery. Depositions of the defendants, Target Plaintiffs, The Home Depot, the Hertz Plaintiffs, the Dollar General Plaintiffs, the 7-Eleven Plaintiffs, Roundy's, and representatives for the Rule 23(b)(2) Plaintiffs are complete. The deadlines to complete discovery have been extended in certain actions.

Several parties are continuing to work with each other concerning questions and issues related to their respective document and data productions. There are no discovery disputes that are ripe for the Court to address. The parties reserve their rights to raise data issues that they are unable to resolve, including questions about data that has yet to be produced.

Sears Holdings Corp., by its successor in interest, Elgin Avenue Recovery LLC, and Transform SR Holdings LLC continue to attempt to locate replacement experts, and will continue to attempt to confer with counsel to reach a suitable resolution concerning expert retention and scheduling.

The *Accor* Plaintiffs have been meeting and conferring with Defendants on a discovery plan. In an effort to promote efficiency and reduce costs for all parties involved, the *Accor* Plaintiffs are seeking access to the record in this case through the existing document production provided to Direct Action Plaintiffs. Direct Action Plaintiffs have not objected to the *Accor* Plaintiffs' request. However, the *Accor* Plaintiffs have not yet reached an agreement with Defendants on obtaining access to the record or a schedule for conducting discovery. The parties will try to resolve these issues prior to the status conference or have a specific timeline for

resolution in place by the status conference. Defendants and the *Accor* Plaintiffs are also discussing a schedule for the discovery that Defendants will take from the *Accor* Plaintiffs.

Defendants will seek to proceed with all additional discovery in a coordinated fashion, including with respect to the MTA litigation.

III. EXPERT DEPOSITIONS

Expert discovery is ongoing. Pursuant to the order entered April 12, 2019, plaintiffs' reply expert reports were served on October 11, 2019 and depositions are to be completed by January 24, 2020. Three depositions have already been taken, and the parties have agreed or are continuing to confer about dates, locations and length for most of the remaining depositions. The parties will continue to discuss these matters and only seek the court's assistance if necessary.

Dated: October 31, 2019

Respectfully submitted,

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